

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)

Bell Atlantic-Massachusetts Tariff No.)

17 Digital Subscriber Line Compliance Filing) D.T.E. 98-57, Phase III

and Line Sharing Filing)

MOTION OF RHYTHMS LINKS INC. FOR EXTENSION
OF DEADLINE FOR FILING OF TESTIMONY

I. INTRODUCTION

Pursuant to 220 C.M.R. 1.04(5) and 220 C.M.R. 1.06(6)(c)(4), Rhythms Links Inc.

("Rhythms") moves that the Department extend the deadline for the submission of its pre-filed testimony until ten (10) days after Bell Atlantic- Massachusetts ("BAMA") fully responds to the information requests propounded by Rhythms and Covad Communications Company on June 2, 2000. As grounds for its motion, Rhythms states as follows.

Under the procedural schedule drawn by the Hearing Officer, parties were permitted to commence discovery immediately. That schedule called for BAMA to respond within seven (7) days after the receipt of information requests. Rhythms and Covad filed their first set of information requests on June 2, 2000, in order to afford their witnesses an opportunity to review and utilize BAMA's responses in their pre-filed testimony. When responses to these information requests were not forthcoming within the turnaround time frame established by the Hearing Officer, counsel called BAMA and was informed that responses had been prepared and were due to be released during the week of June 12, 2000. Accordingly, Rhythms did not deem it necessary to file a motion to compel at that time. However, those responses were not received until June 19, 2000. (1)

Upon examination of the responses filed by BAMA, Rhythms discovered that BAMA had (1) refused to provide responses to virtually identical discovery requests which Bell Atlantic answered in New York Public Service Commission proceedings; (2) failed to answer numerous information requests at all; and (3) interposed other objections.

Untitled

Rhythms expected that BAMA would provide responses to all of its June 2, 2000 information requests during the week of June 12, 2000. During the week of June 19, 2000, counsel for Rhythms tried to contact BAMA counsel through voice mail, email and messages with her assistant in order to discuss these discovery matters; unfortunately, BAMA counsel has been engaged in other matters and did not respond to counsel's request to discuss disputed discovery items as of June 22, 2000. As a result of BAMA's failure to comply with discovery requirements, Rhythms intends to file a motion to compel on June 26, 2000. (2)

BAMA's failure to submit complete responses in a timely manner has prejudiced Rhythms' ability to prepare their testimony in accordance with the Hearing Officer's procedural schedule. An extension of time is needed in order to permit Rhythms' witnesses to review the information which BAMA has produced late and which it may be ordered to produce pursuant Rhythms' motion to compel. (3)

II. THE DEPARTMENT SHOULD EXTEND THE DEADLINE FOR THE
SUBMISSION OF RHYTHMS' TESTIMONY UNTIL TEN DAYS
AFTER BAMA HAS FILED COMPLETE RESPONSES TO THE
JUNE 2, 2000 INFORMATION REQUESTS

BAMA's failure to file discovery responses in a timely and complete manner has prejudiced Rhythms' ability to submit direct testimony in accordance with the procedural schedule established by the Department. Rhythms purposefully issued discovery on June 2, 2000, to enable its witnesses to review BAMA's responses and utilize them in preparing direct testimony. However, BAMA failed to respond in a timely manner. It did not request or receive an extension of time. By failing to comply with the Hearing Officer's procedural schedule, BAMA has made it impossible for Rhythms' witnesses to complete and submit pre-filed testimony in accordance with the current schedule.

An extension for the submission of pre-filed testimony is needed for the further reason that BAMA already has refused to produce information which is critical to the direct case of Rhythms. As explained above, this information was provided in New York Public Service Commission proceedings and should be produced in this case as well. Finally, BAMA's objections to the production of information in response to several other requests and the pending motion to compel warrant either an extension of the deadline for the submission of testimony.

Rhythms accordingly requests that the Department extend the deadline for the submission of testimony until ten (10) days after BAMA has completed all responses to its June 2, 2000 information requests or the Department has ruled that a specific response is not required. At the very least, Rhythms should be afforded an opportunity to submit supplemental pre-filed testimony relating to BAMA information responses within ten (10) days after BAMA has completed its discovery responses (including any responses produced pursuant to Rhythms' motion to compel).

If additional scheduling changes are required as a result of granting the requested extension, Rhythms should not be prejudiced by BAMA's conduct. In no event should the Department reduce the amount of time currently in the schedule between the submission of BAMA's rebuttal testimony and the commencement of evidentiary hearings. As the non-compliant party, BAMA should bear any negative consequences of rescheduling caused by its failure to comply with discovery requirements in a timely and full manner.

III. CONCLUSION

Untitled

For the reasons stated above, the Department should extend the deadline for the submission of Rhythms' testimony until ten (10) days following BAMA's submission of

complete responses to those information requests.

Respectfully submitted,

RHYTHMS LINKS INC.

By its attorneys,

Elise P.W. Kiely

Hélène Courard

Blumenfeld and Cohen

1625 Massachusetts Avenue, N.W. -Suite 300

Washington, DC 20036

(202) 955-6300

Alan D. Mandl

Mandl & Mandl LLP

10 Post Office Square-Suite 630

Boston, MA 02109

(617) 556-1998

Dated: June 23, 2000

1. Counsel for Rhythms waited for BAMA's until 6:30 PM on June 16, 2000, but they did not arrive.
2. Counsel were able to speak on June 23, 2000. Rhythms understands that BAMA is evaluating its position on requests 80 and 96 and intending to file additional responses on June 26, 2000.
3. In the event that Rhythms and Covad submit joint testimony, this extension would apply equally to Covad.